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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of CHRISTOPHER and
VALERIE BOULTER.

CHRISTOPHER BOULTER,

Respondent,

v.

VALERIE BOULTER,

Appellant.

G052720

(Super. Ct. No. 09D008911)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Ronald P. Kreber, Judge. (Retired Judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.). Affirmed.

Law Office of Irene C. Gilbert and Irene Casson Gilbert for Appellant.

Paul J. Nelson and Associates, Paul J. Nelson and Graham D. Kirkman for Respondent.

Valerie Boulter appeals from a postjudgment order denying her request for attorney fees and costs under Family Code sections 2030 and 2032.¹ She contends the trial court abused its discretion because it failed to consider how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances. We find no error and affirm.

FACTS

Valerie and Christopher Boulter (Christopher) were married almost 25 years before they separated and ultimately divorced.² As part of the judgment of dissolution, Christopher was ordered to pay \$10,000 a month in spousal support beginning May 1, 2010 and continuing until either party's death, Valerie's remarriage, or further order of the court. Despite this judgment, Christopher filed a motion to terminate or modify his spousal support just three years later. After trial on the issue in February and March 2015, the court denied Christopher's request for spousal support modification. In its statement of decision on the spousal support modification issue, the court engaged in an analysis of the circumstances of the parties under section 4320 and made factual findings as to several factors. Specifically, the court looked at, among other things, Christopher's income and amounts contributed to his pension, the needs of the parties, Christopher's ability to pay spousal support, and the balance of hardships between the parties.

¹ All further statutory references are to the Family Code.

² We will use the parties' first names for clarity, not out of any disrespect.

Following the spousal support modification trial, Valerie promptly filed a motion for attorney fees, costs, and for sanctions against Christopher. Christopher responded to Valerie's motion, and also requested sanctions. In his response, Christopher argued, in part, that his support should be reduced because Valerie received \$1,826,500 from Christopher in 2014 when he purchased her one-half interest in their family business, Val-Chris Investments (Val-Chris). He also contended the court should consider \$400,000 in dividends and retained earnings Valerie received from Val-Chris from 2011 to 2014.

Both parties submitted income and expense declarations in support of their filings. Valerie's declaration showed she earned \$11,500 a month from spousal support and investment dividends. It also showed Valerie had \$2,000,000 in real and personal property minus any owed debts. Valerie claimed Christopher's gross monthly income was \$161,000. Christopher's declaration showed an average gross monthly income, from all sources, of \$38,739.25. He also claimed approximately \$2,442,279.19 in real and personal property minus any debts. He contended Valerie's gross monthly income was \$21,500.

Approximately three months after Valerie's attorney fee motion was filed, the court held a hearing and ordered each party to pay their own fees and denied the requests for sanctions.³ The court determined it "would not grant [Valerie's] request for attorney fees as she has received \$400,000.00 in dividends and \$1.8 million dollars from the buyout of the business she had an interest in. The need issue is not there." In explaining its reasoning, the court stated it was "familiar that the ruling that [Valerie] is paid \$1,826,500 and also that [Valerie] had 400,000 in dividends," finding "the attorney's fees should be paid by their respective parties. [¶] Otherwise, this litigation will just keep going on and on." Argument at the attorney fee hearing called to the court's

³ The court's denial of sanctions is not at issue in this appeal.

attention the disparity in the parties' income and financial situations, as well as the fact that Christopher initiated the litigation. After hearing the arguments, the court concluded "it's a fair way to handle the attorney's fees would be that both parties pay their respective attorneys. And I've given it a lot of thought, I weighed the different factors, and I realize with the income that was put down for the husband, but that would be the ruling." In its order on the attorney fee issue, the court noted "discussions were had as to [section] 4320 factors" and decided it "would not grant [Valerie's] request for attorney fees as she has received \$400,000.00 in dividends and \$1.8 million dollars from the buyout of the business that she had an interest in. The need issue is not there."

DISCUSSION

"When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties." (§ 2030, subd. (a)(2).) In making a ruling on a request for attorney fees under section 2030, the court looks to section 2032, which states an award may be made "where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties." (§ 2032, subd. (a); *In re Marriage of Sharples* (2014) 223 Cal.App.4th 160, 164-165 (*Sharples*).) "In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in [s]ection 4320." (§ 2032, subd. (b).)

Courts have “considerable latitude in fashioning or denying an attorney fees award.” (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1313 (*Tharp*).) “[N]o particular language is required in an order awarding attorney fees under sections 2030 and 2032, the record (including, but not limited, to the order itself), must reflect an actual exercise of discretion and a consideration of the statutory factors in the exercise of that discretion.” (*Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 254 (*Alan S.*).) Under the abuse of discretion standard, we may only overturn the family court’s decision if no judge could reasonably have made it. (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 406 (*Dietz*).)

Valerie contends the court erred by failing to consider the proper statutory standard under sections 2030 and 2032. We disagree.

The court determined it “would not grant [Valerie’s] request for attorney fees as she had received \$400,000.00 in dividends and \$1.8 million dollars from the buyout of the business that she had an interest in. The need issue is not there.” In explaining its reasoning, the court repeated Valerie’s receipt of the buyout money and dividends, and concluded “the attorney’s fees should be paid by their respective parties. [¶] Otherwise, this litigation will just keep going on and on.” It also noted that it had “weighed the different factors” and determined having each party pay for its own fees would be “fair.” Counsel for Valerie specifically brought the income and financial disparity issue to the court’s attention prior to the ruling, as well as the fact that Christopher initiated the litigation.

In reaching its decision, the trial court properly applied the legal standard “to determine how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.” (*Dietz, supra*, 176 Cal.App.4th at p. 406.) While it did not use the precise language of section 2030, no specific language is required in a court’s order, as long as the court demonstrates it considered the statutory factors. (*Alan S., supra*, 172 Cal.App.4th at pp. 254-255.) The court considered whether an

award of attorney fees was appropriate given the financial situation of the parties, including, but not limited to, Valerie's receipt of buyout money and dividends, and Christopher's income. The disparity in funds to retain counsel was specifically called to the court's attention at the hearing, and the court is presumed to have considered this factor, especially in light of its reasoning that despite the disparity in income, Valerie had received approximately \$2.2 million in buyout money and dividends. This same information from the hearing, along with the income and expense declarations submitted before the hearing, demonstrated the court also considered whether Christopher was able to pay for legal representation of both parties. There is no indication the court failed to consider whether awarding attorney fees and costs was "just and reasonable under the relative circumstances of the respective parties." (§ 2032, subd. (a); *Sharples*, *supra*, 223 Cal.App.4th at pp. 164-165.) Indeed, the court addressed this factor by stating "[t]he need issue is just not there."

Valerie argues the trial court did not apply the statutory factors for evaluating her attorney fees request, citing *Sharples*, *supra*, 223 Cal.App.4th 160. *Sharples*, however, is readily distinguishable. There, the trial court denied a request for attorney fees and the Court of Appeal reversed. (*Id.* at p. 168.) The record reflected the trial court failed to exercise its discretion with regard to the fee request at issue because it mistakenly determined it could not consider the request on its merits because a certain form was not submitted. (*Ibid.*) Indeed, the only finding the court made was the form was not filed. (*Ibid.*)

Similarly, the *Tharp* court denied a request for attorney fees and the Court of Appeal reversed. (*Tharp*, *supra*, 188 Cal.App.4th at p. 1328.) The record disclosed the trial court abused its discretion by refusing to review billing statements before "summarily denying the attorney fees requested." (*Id.* at p. 1314.) "Essentially, the family court concluded that because the request was so large, and the accompanying documents so voluminous, [the wife] was entitled to nothing. It was a clear abuse of

discretion to refuse to spend the necessary time to review and consider the time records and billings of [the wife's attorney] in a case the family court had deemed complex.”

(*Ibid.*)

In contrast to *Sharples* and *Tharp*, here the trial court did indeed address the parties' financial situations, heard specific argument about disparity in incomes, and determined a fair approach was for each party to bear their own attorney fees. In addition to the findings it made on the attorney fee motion, the court considered the circumstances of the respective parties under section 4320 just three months earlier in its statement of decision denying Christopher's request for spousal support modification. This bolsters the court's somewhat cryptic language in its order denying the attorney fee motion, stating, “Discussions were had as to [section] 4320 factors.” The record reflects the court analyzed the section 4320 factors both in its consideration of the attorney fee motion and Christopher's request for spousal support modification. While the court could have made more explicit findings, there is no specific language required by sections 2030 and 2032, and the record is sufficient to show the court exercised its discretion and considered the statutory scheme in reaching its decision.

Valerie relies on *Dietz, supra*, 176 Cal.App.4th 387 for the proposition the court failed to make an assessment of the parties' financial situations to determine whether there was a disparity in their respective access to legal counsel and whether one party was able to pay for legal representation for both sides. The *Dietz* court denied the request for attorney fees, stating there was ““no need”” for the husband to pay the wife's attorney fees because both “parties here have equal access to quality legal services. The order to show cause re termination or reduction in spousal support was appropriate. It was brought in good faith. It was earnest. There just isn't any reason here to shift the burden of the attorney's fees.” (*Id.* at p. 406.) The Court of Appeal reversed and remanded for the trial court to consider the proper standard of apportioning the overall cost of the litigation equitably between the parties given their relative circumstances. (*Id.*

at pp. 406-407.) The Court of Appeal noted the fact that the party requesting attorney fees has resources is not necessarily a bar to obtaining fees, but rather just one of the factors to be considered. (*Id.* at p. 406.)

Here, however, the trial court did more than consider whether Christopher's request for termination or reduction in spousal support was appropriate. Indeed, the court considered both Christopher's income and Valerie's financial situation. It also determined there was no "need" shown, addressing the disparity in the parties' ability to pay for counsel. Valerie makes much of the court's statement that attorney fees should be paid by each party because "[o]therwise, this litigation will just keep going on and on." While this is not a factor under sections 2030 and 2032, the court also looks to section 4320 which entitles it to consider "[a]ny other factors the court determines are just and equitable." (*Id.*, subd. (n).) Indeed, Valerie argued in her opening brief on appeal that the court "failed to consider the protracted litigation, its complexity and cost as a relevant factor in determining a reasonable fee award." However, the court's comment about the lengthy litigation appears to address this very issue. In any event, this was not the only factor the court discussed. As detailed above, the court did make findings as to the other statutory factors. Furthermore, the record contained detailed information pertaining to the parties' financial situations. Because we may only overturn the decision if no judge could reasonably have made it, on this record we have no basis upon which to say the court's ruling was unreasonable.

DISPOSITION

The postjudgment order denying Valerie's request for attorney fees and costs is affirmed. Christopher shall recover his costs incurred on appeal.

IKOLA, J.

WE CONCUR:

FYBEL, ACTING P. J.

THOMPSON, J.